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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 DON RATHBURN and TERESA
13 RATHBURN, Husband and Wife,

14 Plaintiff,

15 v.

16 KNIGHT TRANSPORTATION, INC.;
17 KNIGHT SUBPOENA DUCES TECUM
18 REFRIGERATED, LLC; KNIGHT-SWIFT
19 (NO APPEARANCE NECESSARY)
20 TRANSPORTATION HOLDINGS, INC.;
21 CAROL WALKER; JOHN DOES I through X,
22 inclusive; ABC CORPORATIONS I through
23 X, inclusive; and BLACK AND WHITE
24 COMPANIES I through X, inclusive,

25 Defendant.

Case No. 3:18-CV-0133-LRH-WGC

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

26 IT IS HEREBY STIPULATED, AGREED AND UNDERSTOOD BY Plaintiffs DON
27 RATHBURN and TERESA RATHBURN ("Plaintiffs") and Defendants KNIGHT
28 TRANSPORTATION, INC., KNIGHT REFRIGERATED, LLC and CAROL WALKER
("Defendants"), as follows:

1. Discovery in the above-entitled action may involve documents, photographs, video,
or other information of a proprietary and non-public nature, and that the parties consider
confidential or highly confidential.

1 2. Pursuant to FRCP 26(c), good cause exists for the issuance of a protective order
2 governing the handling of certain documents, photographs, video, or other information.

3 3. This Order shall be applicable to and govern all confidential or highly confidential
4 information in any form (including without limitation information contained in or on any tangible
5 thing) produced or disclosed by or on behalf of any party to this litigation, in connection with this
6 Case No. 3:18-cv-00133-MMD-WGC ("Action").

7 4. The following definitions shall apply:

8 a. "CONFIDENTIAL INFORMATION" shall mean documents, photographs,
9 video, or other information designated as "CONFIDENTIAL" by a
10 Producing Party, who in good faith believes the documents, photographs,
11 video, or other information constitutes or include proprietary or non-public
12 information that (i) is used by the party in, or pertaining to, its business; (ii)
13 is not generally known by the general public; and (iii) the party normally
14 would not reveal to third parties or, if disclosed, would require such third
15 parties to maintain in confidence.

16 b. "HIGHLY CONFIDENTIAL INFORMATION" shall mean documents,
17 photographs, video, or other information designated thereon as "HIGHLY
18 CONFIDENTIAL" by a Producing Party, who in good faith believes the
19 documents, photographs, video, or other information are particularly or
20 especially sensitive and confidential that the Producing Party has and other
21 discovery materials which the Producing Party considers so sensitive or
22 confidential that added protections are warranted.

23 c. "Producing Party" shall mean the parties, person or entity producing
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
25 INFORMATION or giving testimony in this Action regarding or relating to
26 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
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1 INFORMATION which has been designated as CONFIDENTIAL or
2 HIGHLY CONFIDENTIAL subject to this Protective Order.

3 d. "Recipient" shall mean the party, person or entity who has agreed in writing
4 to be subject to this Protective Order to whom the Producing Party makes
5 available CONFIDENTIAL INFORMATION or HIGHLY
6 CONFIDENTIAL INFORMATION. Recipient shall include those persons
7 or entities identified in Sections 7 and 8.

8 e. "Disclose" shall mean the transfer or delivery to a party, person or entity of
9 the CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
10 INFORMATION, permitting the inspection or review of the
11 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
12 INFORMATION, or communicating the contents of the CONFIDENTIAL
13 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION.

14 5. CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
15 INFORMATION shall be used by the parties in this Action solely for the purpose of this Action,
16 and not for any other purpose whatsoever.

17 6. It is the intention of the parties that the designation of documents, photographs,
18 video, or other information as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" be used
19 narrowly, and with the most limited use possible.

20 7. Information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL,"
21 and any copies, excerpts or summaries thereof, and any further information derived therefrom,
22 shall not be revealed, disclosed or otherwise made known to persons other than those specified
23 below or in any manner other than as specified below:

24 a. *The Court*—Any party may disclose and submit CONFIDENTIAL
25 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to the
26 Court, including all persons employed by the Court. Any CONFIDENTIAL
27 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, and
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1 information derived therefrom, which are filed with the Court shall be filed
2 in accordance with Paragraph 13 of this Stipulated Protective Order.

3 b. *Outside Counsel*—CONFIDENTIAL INFORMATION and HIGHLY
4 CONFIDENTIAL INFORMATION may be disclosed to outside counsel
5 for the parties in this action, including counsel's employees and outside
6 contractors used to perform clerical functions.

7 c. *Receiving Parties*—CONFIDENTIAL INFORMATION may be disclosed
8 (1) to in-house counsel and (2) to other employees of a Receiving Party
9 whose participation in the prosecution or defense of the action, is necessary
10 in the good faith assessment of counsel for the Receiving Party.

11 d. *Expert Witnesses*—CONFIDENTIAL INFORMATION and HIGHLY
12 CONFIDENTIAL INFORMATION may be disclosed to outside experts
13 retained to work on this action, including employees of such experts and
14 persons providing clerical or support services. The parties agree that before
15 any HIGHLY CONFIDENTIAL INFORMATION is provided to an expert
16 witness, the Receiving Party must obtain written consent from the
17 Producing Party, which consent will not be unreasonably refused. The
18 parties agree that such persons shall agree in writing in a form substantially
19 similar to **Exhibit "A"** attached hereto in advance of receiving any
20 HIGHLY CONFIDENTIAL INFORMATION to be subject to its terms.

21 e. *Employees And Former Employees Of The Producing Party*—
22 CONFIDENTIAL INFORMATION and HIGHLY CONFIDENTIAL
23 INFORMATION of the Producing Party may be disclosed by the Receiving
24 Party during any deposition in this action or at trial of the action to any
25 employee of the Producing Party or its affiliates and any former employee
26 of the Producing Party or its affiliates who was employed by the Producing
27 Party or its affiliates (1) on the date the document was prepared or dated, or
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1 (2) on the dates to which the information relates. Such information may
2 also be disclosed to any attorney representing such person at his or her
3 deposition. The parties agree that before any HIGHLY CONFIDENTIAL
4 INFORMATION is disclosed to any employees of the Producing Party
5 pursuant to this paragraph, the Receiving Party must obtain written consent
6 from the Producing Party, which consent will not be unreasonably refused.

7 f. *Non-parties*—CONFIDENTIAL INFORMATION may be disclosed
8 during any deposition in the action or at trial of the actions to a non-party
9 witness (and any attorney representing such person at his or her deposition).

10 g. *Court Reporters*—CONFIDENTIAL INFORMATION and HIGHLY
11 CONFIDENTIAL INFORMATION may be disclosed to court reporters
12 rendering court reporting services for depositions or the trial in the Civil
13 Actions, including the employees of such court reporters.

14 8. Recipients are prohibited from disclosing CONFIDENTIAL INFORMATION or
15 HIGHLY CONFIDENTIAL INFORMATION except as permitted by this Protective Order.

16 9. Recipients of CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
17 INFORMATION hereby agree to be subject to the jurisdiction of this Court for the purpose of any
18 proceedings relating to CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
19 INFORMATION protected by this Protective Order.

20 10. The Recipient of any CONFIDENTIAL INFORMATION or HIGHLY
21 CONFIDENTIAL INFORMATION shall maintain such information in a secure and safe area and
22 shall exercise the same standard of due and proper care with respect to the storage, custody, use
23 and/or dissemination of such information as is exercised by the recipient with respect to its own
24 proprietary information.

25 11. In the event any Recipient to whom CONFIDENTIAL INFORMATION or
26 HIGHLY CONFIDENTIAL INFORMATION has been disclosed is no longer involved in this
27 Action, said Recipient shall return all CONFIDENTIAL INFORMATION and/or HIGHLY
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1 CONFIDENTIAL INFORMATION to the Producing Party. The Recipient shall remain subject
2 to the provisions of this Protective Order.

3 12. CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
4 INFORMATION shall be designated as such by the Producing Party as follows:

5 a. *Documents (including documents or information included in discovery*
6 *responses)*—Documents shall be designated as CONFIDENTIAL
7 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION by
8 placing or affixing on the document, or on a label associated with the
9 document, in a manner that will not interfere with its legibility, the
10 designation “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” A
11 Designation on the first page of the document is sufficient to bring the entire
12 documents within the scope of this Order.

13 b. *Non-documentary information*—In the event any CONFIDENTIAL
14 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION is
15 disclosed by a Producing Party in electronic, photographic or other non-
16 documentary form, the “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL” designation shall be placed on the jacket, cover or
18 container in which the non-documentary CONFIDENTIAL
19 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION is
20 produced. The Recipient shall maintain the non-documentary
21 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
22 INFORMATION in the marked jacket, cover or container, and shall in good
23 faith take such steps necessary to ensure that the non-documentary
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
25 INFORMATION is not disclosed except as provided in this Protective
26 Order.

1 c. *Testimony*—The Producing Party may designate testimony or exhibits as
2 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
3 INFORMATION by making a statement to that effect on the record when
4 the testimony is given or by identifying, by reference to pages and lines, the
5 portions of the transcript that reflect CONFIDENTIAL INFORMATION or
6 HIGHLY CONFIDENTIAL INFORMATION. In addition, corrections,
7 additions, or deletions to portions of a transcript that the designating party
8 wishes to designate as CONFIDENTIAL INFORMATION or HIGHLY
9 CONFIDENTIAL INFORMATION may be identified by page and line
10 references. Designations made after a deposition shall be made by written
11 notice served on all counsel of record. For thirty days after the receipt, the
12 entire transcript of any deposition shall be treated as CONFIDENTIAL
13 INFORMATION, except that any portions of testimony designated
14 HIGHLY CONFIDENTIAL INFORMATION at the time of and during the
15 deposition shall be treated as such. If testimony is designated as
16 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
17 INFORMATION, the parties' counsel and the court reporter who
18 transcribes the deposition testimony shall make reasonable arrangements to
19 maintain the confidentiality of any deposition testimony or exhibits
20 designated as CONFIDENTIAL INFORMATION or HIGHLY
21 CONFIDENTIAL INFORMATION in accordance with the terms of this
22 Order.¹ These arrangements may include the marking of transcript pages,
23 covers or exhibits, and other measures to preclude the disclosure of
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
25 INFORMATION to other than qualified persons.

26 d. In the event that documents, photographs, video, or other information that
27 may contain CONFIDENTIAL INFORMATION or HIGHLY
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1 CONFIDENTIAL INFORMATION are made available for inspection,
2 upon prior written notice by the Producing Party, the party inspecting the
3 documents and/or information shall treat all documents and information
4 produced as CONFIDENTIAL INFORMATION or HIGHLY
5 CONFIDENTIAL INFORMATION until selected copies are furnished.
6 There will be no waiver of confidentiality by the inspecting of
7 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
8 INFORMATION before it is copied and marked "CONFIDENTIAL" or
9 "HIGHLY CONFIDENTIAL."

10 e. A Producing Party shall mark as "CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL" any CONFIDENTIAL INFORMATION or HIGHLY
12 CONFIDENTIAL INFORMATION prior to or contemporaneously with
13 production and delivery of copies to the Recipient. Unless designated as
14 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
15 INFORMATION, all documents, photographs, video, or other information
16 produced shall be considered non-confidential after production.

17 f. In the event that a Producing Party determines that documents, photographs,
18 video, or other information delivered to a Recipient were inadvertently
19 produced and not designated as CONFIDENTIAL INFORMATION or
20 HIGHLY CONFIDENTIAL INFORMATION, the Producing Party shall
21 provide notice in writing to the Recipient, and the Recipient shall mark as
22 CONFIDENTIAL or HIGHLY CONFIDENTIAL those documents,
23 photographs, video, or other information identified, which shall be deemed
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
25 INFORMATION and the Recipient shall treat that information in
26 accordance with this Protective Order from and after the date of receipt of
27 written notice.
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1 g. Any Producing Party's inadvertent or unintentional failure to designate
2 documents, photographs, video, or other information as CONFIDENTIAL
3 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall
4 not be deemed a waiver in whole or in part of that Producing Party's claim
5 of confidentiality, so long as the Producing Party provides the written
6 notification discussed in "f." above within a reasonable time after learning
7 that the confidential information was inadvertently or unintentionally
8 produced without an appropriate confidentiality designation.

9 13. Any material designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL", if
10 filed with this Court, shall be filed under seal. If this Court enters written findings that the sealing
11 of the material is justified, the material will remain under seal, but the material will be unsealed if
12 this Court denies the filing Party's concurrent request to seal the material and/or enters an order
13 unsealing them pursuant to LR IA 10-5(a)-(b). The Party filing any paper which reflects, contains
14 or includes any material designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" subject
15 to this Protective Order shall also file a concurrent motion for leave to file those documents under
16 seal in accordance with LR IA 10-5 and serve those documents in accordance with LR IC 4-1.

17 14. In the event a party designates as CONFIDENTIAL or HIGHLY CONFIDENTIAL
18 any information disclosed or discussed in the course of a deposition, the reporter for the deposition
19 shall be directed that questions, answers, colloquy, and exhibits referring or relating to any such
20 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION shall be
21 placed in a separate volume labeled so as to reflect the confidentiality of the material contained
22 therein.

23 15. In the event any party deposing a witness wishes to show or disclose
24 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION to a non-
25 party witness, or a witness not qualified under this Protective Order to receive such information,
26 the party shall not disclose the CONFIDENTIAL INFORMATION or HIGHLY
27 CONFIDENTIAL INFORMATION to the witness until such CONFIDENTIAL INFORMATION
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1 or HIGHLY CONFIDENTIAL INFORMATION has been shown or disclosed to the attorney
2 representing the Producing Party. The attorney representing the Producing Party shall have a
3 reasonable opportunity at the deposition to review the CONFIDENTIAL INFORMATION or
4 HIGHLY CONFIDENTIAL INFORMATION and to object on the record to its disclosure to the
5 witness. In the event such an objection is interposed, the witness to whom the CONFIDENTIAL
6 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION will be disclosed, and any
7 persons attending the deposition who are not identified in paragraph 7 or 8 hereof, shall be first
8 required to consent to and abide by the terms of this Protective Order before the CONFIDENTIAL
9 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION may be disclosed. Should any
10 person in the deposition refuse to consent to and abide by the terms of this Protective Order, then
11 he or she shall leave the deposition room until the conclusion of the questioning concerning the
12 CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, and shall
13 not be entitled to receive copies of any CONFIDENTIAL INFORMATION or HIGHLY
14 CONFIDENTIAL INFORMATION or portions of the transcript relating to the CONFIDENTIAL
15 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION absent further order of this
16 Court. This procedure applies in the case of all depositions conducted in this Action, whether
17 conducted within or outside the State of Nevada.

18 16. If any portion of a deposition transcript is filed and contains CONFIDENTIAL
19 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION, that portion of the transcript
20 shall bear the appropriate legend on the caption page and shall be filed under seal.

21 17. A Recipient shall not be obligated to challenge the propriety of any
22 CONFIDENTIAL or HIGHLY CONFIDENTIAL designation when made, and failure to do so
23 shall not preclude a subsequent challenge thereto. In the event any party objects at any stage of
24 these proceedings to a CONFIDENTIAL or HIGHLY CONFIDENTIAL designation, such party
25 shall notify the Producing Party of its objection in writing specifically setting forth the objection.
26 If the parties are unable to resolve their dispute after making good faith attempts to do so, the party
27 challenging the designation may request appropriate relief from the Court, provided ten days have
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1 passed since the Producing Party was first notified of the dispute. During the notice period, the
2 objecting party shall confer with the Producing Party in a good faith effort to resolve the dispute.
3 The objecting party's failure to meet and confer shall be dispositive of the objecting party's right
4 to further challenge the propriety of any CONFIDENTIAL or HIGHLY CONFIDENTIAL
5 designation. The burden of proving information has been properly designated as
6 CONFIDENTIAL or HIGHLY CONFIDENTIAL is on the Producing Party.

7 18. Nothing in this Protective Order shall be construed as an admission or agreement
8 that any specific document or information is or is not confidential or is or is not otherwise subject
9 to discovery or is admissible in evidence. Nothing in this Protective Order shall be deemed a
10 waiver of any party's rights to oppose production of any information or documents for any reason
11 other than the confidentiality of such information or documents. All documents and things
12 designated as CONFIDENTIAL or HIGHLY CONFIDENTIAL shall be used only for purposes
13 of this proceeding or for dealing with any claim or controversy that is or shall be the subject of this
14 proceeding.

15 19. Use of any CONFIDENTIAL INFORMATION or HIGHLY CONFIDENTIAL
16 INFORMATION in any Court proceeding shall not, without further order of the Court, cause such
17 information to lose its CONFIDENTIAL or HIGHLY CONFIDENTIAL status. The parties shall
18 take all steps reasonably required to protect the confidentiality of such information during such
19 use.

20 20. The restrictions provided for herein shall not terminate upon the conclusion of this
21 Action but shall continue until further order of this Court; provided, however, that this Protective
22 Order shall not be construed: (i) to prevent any party or its counsel from making use of information
23 which was lawfully in its possession prior to its disclosure by the Producing Party; (ii) to apply to
24 information which appears in printed publications or becomes publicly known through no fault of
25 any party or its counsel; or (iii) to apply to information which any party or its counsel has lawfully
26 obtained since disclosure by the Producing Party, or shall thereafter lawfully obtain, from a third
27 party having the right to disclose such information.

1 21. Nothing in this Order shall preclude any party to the lawsuit or its attorneys from:
2 (i) showing a document or information designated as CONFIDENTIAL or HIGHLY
3 CONFIDENTIAL to an individual who either prepared or reviewed the document or information
4 prior to the filing of this Action; or (ii) disclosing or using, in any manner or for any purpose, any
5 information or documents from the party's own files which the party itself has designated as
6 CONFIDENTIAL or HIGHLY CONFIDENTIAL.

7 22. Upon final determination of the above-captioned proceeding, including all appeals,
8 except as provided herein below, all documents, photographs, video, or other information
9 designated CONFIDENTIAL or HIGHLY CONFIDENTIAL which are in the possession of any
10 Recipient shall be destroyed or returned to counsel of record for the Producing Party, and all
11 persons who have had access to or possession of the CONFIDENTIAL INFORMATION or
12 HIGHLY CONFIDENTIAL INFORMATION shall certify that they have either destroyed such
13 material and all copies thereof or returned all such information and all copies thereof to the
14 Producing Party. Notwithstanding any of the foregoing, outside counsel shall be entitled to keep
15 their copies of pleadings and other papers submitted to the Court.

16 23. This Protective Order may be modified only by stipulation of the parties so ordered
17 by the Court or by other Order of the Court.

18 24. Parties later joined to this Action or not signing this Order shall not be entitled to
19 receive or review anything designated CONFIDENTIAL or HIGHLY CONFIDENTIAL under
20 the terms of this Order until and unless they sign and agree to the terms of this Order.

21 25. In the event a Recipient who has received CONFIDENTIAL or HIGHLY
22 CONFIDENTIAL subject to this Order is: (a) subpoenaed in another action; (b) served with a
23 demand in another action to which the person is a party; or (c) served with any other legal process
24 by one not a party to this action, that seeks CONFIDENTIAL or HIGHLY CONFIDENTIAL, he,
25 she, or it shall give prompt written notice of the receipt of such subpoena, demand or other legal
26 process to the designating party and its counsel, and upon request, shall reasonably cooperate with
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1 the designating party in its efforts to protect the CONFIDENTIAL or HIGHLY CONFIDENTIAL
2 designated information from disclosure.

3 26. This Protective Order shall apply to pretrial proceedings and discovery only. The
4 Court will establish separately any necessary procedures for handling CONFIDENTIAL
5 INFORMATION or HIGHLY CONFIDENTIAL INFORMATION during the trial of this matter.

6 **IT IS SO STIPULATED.**

7 DATED this 15th day of September, 2018.

DATED this 13 day of September, 2018.

8 Bradley, Drendel & Jeanney
9 P. O. Box 1987
10 Reno, Nevada 89505
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11 s/

12 Joseph S. Bradley, Esq.
Attorneys for Plaintiffs

11 s/

12 Todd R. Alexander, Esq.
Attorneys for Defendants

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14 **ORDER**

15
16 Paragraph 13 is modified to reflect that any motion regarding filing confidential
17 information and motions to seal shall comply with LR IA 10-5, the requirements of
18 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Center for*
Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1097 (9th Cir. 2016).

19 **IT IS SO ORDERED.**

20 DATED: September 14, 2018.

21
22 William G. Cobb

23 UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A
CONFIDENTIALITY AGREEMENT

I, _____ do hereby acknowledge and agree as follows:

1. I have read the Stipulated Confidentiality Agreement and Protective Order of which the form of this agreement is an exhibit.

2. I understand the terms of the Stipulated Confidentiality Agreement and Protective Order and agree to be bound by, and to strictly adhere to, all terms and provisions of the Stipulated Confidentiality Agreement and Protective Order.

3. I hereby submit to the jurisdiction of the United States District Court District of Nevada, Northern Division, solely for purpose of enforcement of the Stipulation and Protective Order and this Agreement.

DATED: _____, 2018

Signature

Name

Address

Telephone Number